

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

RAQUEL GUERRERO, §
Plaintiff §
VS. § CIVIL ACTION NO. 4:21-cv-00457
BILLY WALLER TRUCKING, § JURY REQUESTED
Defendants §

**DEFENDANT BILLY JOE WALLER D/B/A BILLY WALLER ENTERPRISES'
(INCORRECTLY SUED AS BILLY WALLER TRUCKING)
NOTICE OF REMOVAL OF CIVIL ACTION**

TO THE UNITED STATES DISTRICT JUDGE:

COMES NOW Defendant BILLY JOE WALLER D/B/A BILLY WALLER ENTERPRISES (INCORRECTLY SUED AS BILLY WALLER TRUCKING), (hereinafter referred to as “Defendant or Billy Waller”), and files this Notice of Removal, pursuant to 28 U.S.C. §§ 1332, 1441 and 1446.

1. The Plaintiff, Raquel Guerrero (“Plaintiff”) filed the Plaintiff’s Original Petition on January 6, 2021 in the Harris County District Court which is within the Houston Division of the United States District Court for the Southern District of Texas. The case carries the style of: Cause No.: 2021-00592; *Raquel Guerrero v. Billy Waller Trucking*; in the 269th Judicial District Court of Harris County, Texas. Under 28 U.S.C. § 1446(a), removal to this Division of this District is proper.

2. In the Original Petition Plaintiff alleges that on or about August 15, 2019, Plaintiff and Billy Waller were involved in a motor vehicle incident on US 82 in El Dorado, Union County, Arkansas. Plaintiff claims to have sustained personal injuries and damages and is seeking to recover

(a) past and future medical expenses, (b) past and future physical pain, (c) mental anguish in the past and future, (d) past and future physical impairment, (e) loss of enjoyment of life, (f) exemplary damages, and (g) all other damages allowed by law and equity. The Plaintiff's Original Petition alleges a monetary relief over \$1,000,000.00 (Exhibit A, ¶¶ 2.3 and 6.1).

3. A copy of Plaintiff's Original Petition is attached hereto as Exhibit "A." Billy Waller was served through its agent for service of process on or about January 13, 2021, Exhibit "B."

4. Billy Waller filed its Special Appearance in State Court on February 5, 2021, Exhibit "C."

4. Billy Waller filed its Original Answer in State Court on February 6, 2021, Exhibit "D."

4. Plaintiff is an individual and a resident and citizen of the State of Texas.

6. Billy Joe Waller resides in the state of Arkansas. He operates Billy Waller Enterprises which is a heavy haul motor carrier which is located and has its principal place of business in Emerson, Arkansas, 28 U.S.C. § 1332(c)(1). (See Declaration under Oath as Exhibit "E.")

7. This Notice of Removal is timely as it was filed within the 30 day time period required under 28 U.S.C. § 1446(b).

8. The Action is one which may be removed to this Court by the Defendant pursuant to 28 U.S.C. §§ 1441 and 1446, and over which this Court has original jurisdiction pursuant to 28 U.S.C. § 1332, in that diversity of citizenship exists between the Plaintiff and the Defendant hereto, and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

9. Removal is not barred by 28 U.S.C. § 1445.

10. Pursuant to 28 U.S.C. § 1446(a) and local Rule 81, Billy Waller Trucking has attached hereto: a copy of the state court docket sheet as **Exhibit F**; an Index of Documents being

filed as **Exhibit G**; and a list of all counsel of record as **Exhibit H**.

11. All pleadings, process, orders, and other filings in the state court action are attached to this notice as required by 28 U.S.C. §1446(a).

12. Venue is proper in the Southern District under 28 U.S.C. §1441(a) because the state court where the action has been pending is located within this District.

13. Defendant will promptly file a copy of this Notice of Removal with the Clerk of the state court where the action has been pending.

14. Defendant demanded a jury in the state court action.

15. On or about the date of this filing, Defendant served upon counsel for the Plaintiff a copy of the “Defendant’s Notice of Removal of Civil Action.”

REQUEST FOR HEARING AND JURISDICTIONAL DISCOVERY

16. If Plaintiff contests this removal, Defendant requests:

- (a) a hearing regarding this Court’s jurisdiction over, and the propriety of removal of this matter; and
- (b) leave to conduct limited discovery related to issues surrounding the existence of diversity jurisdiction.

WHEREFORE, the Defendant BILLY JOE WALLER D/B/A BILLY WALLER ENTERPRISES (INCORRECTLY SUED AS BILLY WALLER TRUCKING), (hereinafter referred to as “Defendant or Billy Waller”), by counsel, requests that this Court remove the action from the Harris County District Court to The United States District Court for the Southern District of Texas Houston Division.

Respectfully submitted,

BAIR★HILTY, P.C.

/s/Amanda S. Hilty

TBN: 09683030

FBN: 10187

14711 Pebble Bend Drive

Houston, Texas 77068-2923

Telephone: (713) 862-5599

Facsimile: (713) 868-9444

Email: ahilty@bairhilty.com

ATTORNEY FOR DEFENDANT

**BILLY JOE WALLER D/B/A BILLY WALLER
ENTERPRISES (INCORRECTLY SUED AS
BILLY WALLER TRUCKING)**

OF COUNSEL:

Dale Mellencamp

TBN: 13920250

FBN: 7718

14711 Pebble Bend Drive

Houston, Texas 77068

Telephone: (713)862-5599

Facsimile: (713)868-9444

Email: dmellencamp@bairhilty.com

ATTORNEY FOR DEFENDANT

BILLY JOE WALLER D/B/A BILLY

WALLER ENTERPRISES (INCORRECTLY

SUED AS BILLY WALLER TRUCKING)

CERTIFICATE OF SERVICE

I hereby certify that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per S. Dist. Tex. Loc. R. LR5.1 on the 10th day of February, 2021. A true and correct copy of the foregoing Defendant's Notice of Removal was served upon counsel of record in compliance with the Federal Rules of Civil Procedure by e-service, e-mail, certified mail, return receipt requested, telephonic communications, hand delivery and/or U.S. Mail on this the 10th day of February, 2021.

/s/ Amanda S. Hilty _____
AMANDA S. HILTY